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Corrected version

Juror misconduct alleged in civil rights trial stemming from police shooting

By Mike Carter
Seattle Times staff reporter

A man who lost a civil-rights case against a Kent police officer who shot him in 2005 has asked for a new trial, claiming a juror — the wife of a King County sheriff's deputy — dominated the panel and violated the court's jury instructions by talking about her husband's experiences during deliberations.

Nicomedes Tubar's lawyers say the juror "made assertions about police policies and practices that she claimed to have knowledge of because of her husband's work as an officer" during jury deliberations.

The court had instructed the jury to decide the case solely on evidence presented in court and that jurors "must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy."

U.S. District Judge Coughenour had already expressed serious reservations about the verdict and invited Tubar's attorneys to file the motions.

Tubar also claims in motions filed Wednesday that the 12-member jury's unanimous decision ignored the evidence introduced during Tubar's trial in U.S. District Court in Seattle earlier this month. They claim their case clearly showed Kent Officer Jason Clift used excessive force when he fired the last of three shots at a moving car in a dark parking lot. The car had been reported stolen, and Clift had set up surveillance hoping to catch the thief.

Tubar was a passenger in the vehicle, but didn't know it was stolen, according to the evidence. He was struck in the side by a bullet fired through the driver's-side window. Clift said he thought the driver — who was not hurt — was trying to run him down.

Tubar was asking for at least \$1 million in compensatory and punitive damages.

Tubar's lawyers are asking Coughenour to impose liability against Clift and the city of Kent despite the jury's verdict, or at least grant Tubar a new trial.

Evidence in the trial showed Clift had been involved in two other shootings and had been forced to take leave just two weeks before the shooting because of emotional problems.

After the verdict — reached in five hours after more than two weeks of trial — the judge said of the third gunshot: "Officer Clift was clearly not in danger at the time he fired the third shot, and I cannot conclude that the jury could reach a reasonable verdict concluding that that shot was not" a violation of Tubar's Fourth Amendment protection against an unreasonable seizure.

Juror talks

Allegations of misconduct in the jury room surfaced within minutes of the verdict. A juror approached Tubar's attorney, Tim Ford, outside the courtroom, but Ford could not talk to her because of court rules that prevent attorneys from speaking with jurors.

The same juror told The Seattle Times that she was worried about what had happened during deliberations. The woman, who didn't want to be quoted by name because she feared retaliation, described how a woman who identified herself as a King County deputy's wife dominated the deliberations.

As it turns out, the deputy's wife also attempted to contact Cliff's attorneys after the trial, according to court documents. Neither juror is named in court documents.

Jury questions

Coughenour has allowed the attorneys to speak to those two jurors. Ford has asked the court for access to the other 10 people on the panel and suggested the court may want to hold a hearing to investigate.

Mary Ann McConaughy, one of Cliff's lawyers, declined to comment Thursday.

How the officer's wife made it on to the panel was not clear. Both sides' proposed jury questions included asking if prospective jurors knew or were related to anyone in law enforcement.

The jury's instructions required a unanimous verdict, and jurors were told they have an obligation to stick to their convictions: "Do not come to a decision simply because other jurors think it is right," the instructions said.

The complaining juror told The Times that "she just went along" with the verdict, and then felt bad about it.

Ford's motion also alleges the juror was intimidated by several uniformed Kent officers who attended the trial and were "staring at the jury box."

A couple of days into the trial, Coughenour told Cliff's attorneys to instruct the officers in the gallery to wear plain clothes, according to the documents.

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